as long as the grand jury itself is legally constituted and the proceedings are actually fair, and hold that the technical error of the outsider's presence is not ground for quashing the indictment. *Blevins* v. *State*, 68 Ala. 92; *Bennett* v. *State*, 62 Ark. 516. It is submitted that this error is more properly one of form only, and is therefore cured by the federal statute. See U. S. COMP. ST. (1901) 720, § 1025.

INFANTS — CONTRACTS AND CONVEYANCES — ABATEMENT IN PURCHASE PRICE AT EXPENSE OF INFANTS. — The plaintiff purchased a farm of the defendants. Both the contract of sale and the deed mentioned its contents as "245 acres, more or less." As some of the vendors were infants, the sale was ratified by the court. The plaintiff, later discovering that the farm contained only 235 acres, brought a bill in equity for an abatement of the purchase price. *Held*, that the abatement be allowed. *McComb* v. *Gilkeson*, 66 S. E. 77 (Va.). See NOTES, p. 473.

INJUNCTION — ACTS RESTRAINED — CRIMINAL PROCEEDINGS. —Three plaintiffs brought a bill to enjoin the sheriff and district attorney from prosecuting them under a state liquor law alleged to be invalid. *Held*, that equity will not grant the injunction. *J. W. Kelly & Co.* v. *Conner*, 123 S. W. 622 (Tenn.). See NOTES, p. 469.

INJUNCTION — ACTS RESTRAINED — PASSAGE OF MUNICIPAL ORDINANCES. — The plaintiff sought to restrain the members of the council of the defendant city from passing an ordinance compelling the plaintiff to build viaducts over certain crossings. *Held*, that the injunction should be refused. *Chicago, Rock Island, & Pacific Ry. Co.* v. *City of Lincoln*, 124 N. W. 142 (Neb.). See NOTES, p. 470.

INTERSTATE COMMERCE — CONTROL BY STATES — REGULATION OF RATES ON INTERSTATE FERRIES. — A New Jersey statute of 1799 empowers the boards of chosen freeholders to fix rates to be taken at ferry stations within their respective counties. The board of Hudson County fixed the rates to be taken by ferries plying between that county and New York City. *Held*, that the rates so fixed are valid. *New York Cent. & H. R. R. Co.* v. *Board of Chosen Freeholders*, 74 Atl. 954 (N. J., Ct. Err. & App.).

From a time antedating the Revolution, states have exercised the power of regulating ferries, and no exception has been made in the case of interstate ferries. When the power came to be contested under the federal Constitution, the states held that they had only potentially ceded their jurisdiction to Congress and could therefore continue to exercise it until Congress intervened. *The People* v. *Babcock*, 11 Wend. (N. Y.) 587; *Freeholders of Hudson Co.* v. *State*, 24 N. J. L. 718. The Supreme Court in several cases adopted the same view. *Fanning* v. *Gregoire*, 16 How. (U. S.) 524; *Wiggins Ferry Co.* v. *East St. Louis*, 107 U. S. 365. Later federal cases, however, have encroached upon this doctrine. A state cannot regulate tolls over an interstate bridge. *Covington & Cincinnati Bridge Co.* v. *Kentucky*, 154 U. S. 204. Nor can a state regulate an interstate ferry for railroad cars which is not a ferry in the technical historic sense. *St. Clair County* v. *Interstate Transfer Co.*, 192 U. S. 454. When called upon, the Supreme Court may regard their earlier cases as overruled, but in view of the historic usage, the principal case wisely determined to adhere to the established principle until the Supreme Court should pass upon it directly. The need of some regulation respecting carriers of such general utility and the difficulty of any uniform regulation by Congress argue potently in favor of the established rule.

JUDGMENTS — EQUITABLE RELIEF — DEFAULT DUE TO ILLNESS OF COUNSEL. — In a petition for an injunction to restrain the enforcement of a judgment, the petitioner alleged that he had a complete defense to the action at law, but that his attorney was incapacitated for professional work by sudden illness, that he

was ignorant of this illness and out of the jurisdiction on business when the judgment by default was given, and that he did not learn of it in time to open the default. *Held*, that the petition is not demurrable. *Howell* v. *Ware & Harper*, 66 S. E. 884 (Ga., Sup. Ct.).

Equity will not enjoin the enforcement of a judgment, unless there is a defense not available at law, or unless the judgment was obtained by fraud, surprise, or accident. See *Kersey* v. *Rash*, 3 Del. Ch. 321. Absence of counsel, making unavailable a meritorious defense, is, however, a recognized ground for equitable jurisdiction. *MacCall* v. *Looney*, 96 N. W. 238 (Neb.). But the client must have been free from negligence. *Shields* v. *McClung*, 6 W. Va. 79. So if other competent counsel might have been employed, equity will not intervene. *Crim* v. *Handley*, 94 U. S. 652. Moreover, any laches of counsel is chargeable to the client. *Jones* v. *Leech*, 46 Ia. 186. *Contra*, *Gideon* v. *Dwyer*, 17 N. Y. Misc. 233. Hence if the defense had not been made ready for presentation, or if the absence was due to negligence or if there was another, though inferior, attorney of record in the case, equity refuses to give relief. *Mock* v. *Cundiff*, 6 Port. (*Ala.*) 24; *Bellocq & Ostheimer* v. *Allen*, 2 McGloin (La.) 66; *Powell v. Stewart*, 17 Ala. 719. Mistake, however, may be a cause for equity to interfere. *Weed* v. *Hunt*, 76 Vt. 212. And sudden illness is clearly a sufficient excuse for failure to appear. *Hiller & Co.* v. *Cotton & Co.*, 48 Miss. 593. Since the accident in the principal case was unaccompanied by any fault on the part of counsel or client, there is a proper basis for equitable jurisdiction. See 22 HARV. L. REV. 600.

JUDGMENTS — EQUITABLE RELIEF — FALSE RETURN OF SERVICE IN MECHANICS' LIEN PROCEEDINGS. — Judgment was rendered by default in an action to foreclose a mechanic's lien, and the property sold to A, the lienholder. Although the constable's return showed that process had been duly served on B, the owner, B brought a bill in equity against A to compel a reconveyance, alleging that he had not been served with notice of the proceedings, and that A had no rightful claim. *Held*, that A must open his common-law judgment and permit B to defend. *Mierke* v. *Sebecke*, 74 Atl. 977 (N. J., Ct. Ch.).

Equity will relieve against a judgment at law obtained without due service of process, if it appears that a good defense would have been available. See *Crafts* v. *Dexter*, 8 Ala. 767; *Jeffery* v. *Fitch*, 46 Conn. 601. The better rule, followed in most jurisdictions, is that the officer's return is not conclusive of due service, but may be rebutted even in the absence of fraud on the part of the former plaintiff. *Owens* v. *Ranstead*, 22 Ill. 161; *Ridgeway* v. *Bank of Tennessee*, 11 Humph. (Tenn.) 523. *Contra*, *Taylor* v. *Lewis*, 2 J. J. Marsh. (Ky.) 400. There is no reason against applying the same rule to a judgment in a mechanics' lien proceeding. Such a judgment is frequently said to be *in rem*. See *Porter & Co.* v. *Miles*, 67 Ala. 130, 133. In one sense, this is true, since the judgment is directed against the property and declares the existence of a lien thereon. But it is not binding upon the whole world. *McKim* v. *Mason*, 3 Md. Ch. 186. If the owner of the land is not made a party and served with process, his rights are not concluded by the judgment. *McCoy* v. *Quick*, 30 Wis. 521, 527; *Burnham* v. *Raymond*, 64 N. Y. App. Div. 596; *White* v. *Chaffin*, 32 Ark. 59. The New Jersey statute requires mortgagees also to be joined. GEN. STAT. N. J., TIT. MECHANICS' LIEN, § 34. *Cf. Fleming* v. *Prudential Insurance Co. of America*, 19 Colo. App. 126. Even if the judgment were strictly *in rem*, constructive notice to the world by publication would have been necessary. *McKim* v. *Mason*, *supra*; *Martin* v. *Darling*, 78 Me. 78; *Woodruff* v. *Taylor*, 20 Vt. 65, 76.

LEGACIES AND DEVISES — PARTICULAR INSTANCES OF CONSTRUCTION — ABSOLUTE GIFT FOLLOWED BY QUALIFYING CLAUSES. — A testator left his residuary property on trust for all his children who should be living at his death and reach twenty-one years, as tenants in common. There was a later proviso that